

REI - ~~1152~~
151

MEMORANDUM

To: Mayor Oscar Goodman
Mayor Pro-tem Gary Reese,
Councilman Larry Brown,
Councilman Steve Wolfson,
Councilwoman Lois Tarkanian,
Councilman Steve Ross
Councilman Ricki Barlow
From: Jim Lewis, Deputy City Attorney
Anthony Paglia, Law Clerk
Date: June 20, 2007
Re: State Law provisions regarding the establishment of a gaming enterprise district;
definition of "Clear and Convincing Evidence."

Mayor and Council:

1. NRS 463.3086 (Attached hereto). This statute mandates the findings that must be made by this City Council to approve the REI Gaming Enterprise District (ZON-21166; #item 151).
2. Definition of Clear and Convincing Evidence. NRS 463.3086 requires that the required findings be made upon "clear and convincing evidence." "Clear and Convincing Evidence" is a burden of proof which is best described on a continuum from a lower burden of proof to the highest burden of proof. "Preponderance of the evidence" is a lower burden, "clear and convincing evidence" is a higher burden, and "beyond a reasonable doubt" is the highest burden of proof on the continuum.

Preponderance of the evidence, the lower burden, is satisfied when the facts in question are more probable to be true than false. Clear and convincing evidence, a higher burden of proof, has been described by the Nevada Supreme Court to be a fact that must be highly probable to the point where there is no substantial doubt of its validity. The highest burden is "beyond a reasonable doubt" which is "not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs in life . . . Doubt must be actual and substantial, not mere possibility or speculation."

Is a nutshell, this Council must be "really sure" that the findings made are highly probable and that there is "no substantial doubt" as to the factual validity of the basis of the findings made.

Submitted at City Council

Date 6/20/2007 Item 151

N.R.S. 463.3086

West's Nevada Revised Statutes Annotated Currentness

Title 41. Gaming; Horse Racing; Sporting Events

Chapter 463. Licensing and Control of Gaming (Refs & Annos)

Nonrestricted Gaming Licenses in Certain Counties

⇒ 463.3086. Gaming enterprise district: Petition for designation of location if outside of Las Vegas Boulevard gaming corridor and rural Clark County gaming zone; notice of hearing; hearing; petitioner's burden of proof; limitation on subsequent petition

1. If the location of a proposed establishment:

- (a) Is not within the Las Vegas Boulevard gaming corridor or the rural Clark County gaming zone; and
- (b) Is not within a gaming enterprise district,

the commission shall not approve a nonrestricted license for the establishment unless the location of the establishment is designated a gaming enterprise district pursuant to this section.

2. If a person is proposing to operate an establishment with a nonrestricted license and the location of the proposed establishment:

- (a) Is not within the Las Vegas Boulevard gaming corridor or the rural Clark County gaming zone; and
- (b) Is not within a gaming enterprise district,

the person may petition the county, city or town having jurisdiction over the location of the proposed establishment to designate the location of the proposed establishment a gaming enterprise district pursuant to this section.

3. If a person files a petition pursuant to subsection 2, the county, city or town shall, at least 10 days before the date of the hearing on the petition, mail a notice of the hearing to:

- (a) Each owner of real property whose property line is less than 2,500 feet from the property line of the proposed establishment;
- (b) The owner, as listed on the county assessor's records, of each of the 30 separately owned parcels nearest the proposed establishment, to the extent this notice does not duplicate the notice given pursuant to paragraph (a);
- (c) Each tenant of a mobile home park whose property line is less than 2,500 feet from the property line of the proposed establishment; and
- (d) Any advisory board that represents one or more owners of real property or tenants of a mobile home park whose property line is less than 2,500 feet from the property line of the proposed establishment.

The notice must be written in language that is easy to understand and must set forth the date, time, place and purpose of the hearing and contain a physical description or map of the location of the proposed establishment. The petitioner shall pay the costs of providing the notice that is required by this subsection.

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N.R.S. 463.3086

4. Any interested person is entitled to be heard at the hearing on the petition.

5. The county, city or town shall cause the hearing on the petition to be reported by a court reporter who is certified pursuant to chapter 656 of NRS. The petitioner shall pay the costs of having the hearing reported.

6. At the hearing, the petitioner must prove by clear and convincing evidence that:

(a) The roads, water, sanitation, utilities and related services to the location are adequate;

(b) The proposed establishment will not unduly impact public services, consumption of natural resources and the quality of life enjoyed by residents of the surrounding neighborhoods;

(c) The proposed establishment will enhance, expand and stabilize employment and the local economy;

(d) The proposed establishment will be located in an area planned or zoned for that purpose pursuant to NRS 278.010 to 278.630, inclusive;

(e) The proposed establishment will not be detrimental to the health, safety or general welfare of the community or be incompatible with the surrounding area;

(f) On the date that the petition was filed, the property line of the proposed establishment was not less than:

(1) Five hundred feet from the property line of a developed residential district; and

(2) Fifteen hundred feet from the property line of a public school, private school or structure used primarily for religious services or worship; and

(g) The proposed establishment will not adversely affect:

(1) A developed residential district; or

(2) A public school, private school or structure used primarily for religious services,

whose property line is within 2,500 feet from the property line of the proposed establishment.

7. A three-fourths vote of the governing body of the county, city or town is required to grant the petition to designate the location of the proposed establishment a gaming enterprise district pursuant to this section.

8. A county, city or town that denies a petition submitted pursuant to this section shall not consider another petition concerning the same location or any portion thereof for 1 year after the date of the denial.

9. As used in this section:

(a) "Developed residential district" means a parcel of land zoned primarily for residential use in which at least one completed residential unit has been constructed on the date that the petitioner files a petition pursuant to this section.

(b) "Private school" has the meaning ascribed to it in NRS 394.103.

(c) "Public school" has the meaning ascribed to it in NRS 385.007.

BURDEN OF PROOF CONTINUUM

PREPONDERRANCE
OF THE
EVIDENCE

CLEAR AND
CONVINCING
EVIDENCE

BEYOND A
REASONABLE
DOUBT